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Michigan Court of Appeals Overturns Itself to Hold Apartment Management Liable

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Since the expansion of the open and obvious danger rule by the Michigan Supreme Court in *Lugo v Ameritech Corp., Inc.,* 464 Mich 512 (2001), the Michigan Court of Appeals has been struggling to find a logical and consistent manner of deciding premises liability cases brought against apartment complexes.

Once *Lugo* was decided, the immediate aftermath resulted in dismissal of most premises liability cases. The dilemma, as it relates to apartment complexes, however, was brought about by the plaintiff's bar relying upon Michigan's Landlord-Tenant Statute, MCLA § 554.139, as their new vehicle for liability. The statute was used relatively sparingly prior to *Lugo*.

By relying upon the Landlord-Tenant Statute, plaintiff's attorneys were able to avoid the harsh results of *Lugo.* Their ability to avoid dismissal has been premised upon the rule of law that the open and obvious doctrine cannot be used as a defense to avoid a duty imposed by statute. Therefore, under Michigan law, even when the alleged defect is open and obvious, the plaintiff would still survive a motion for summary disposition on their claims under MCLA § 554.139, which imposes a duty upon the landlord to (1) keep the premises and all common areas fit for the use intended by the parties, and (2) keep the premises in reasonable repair and to comply with local laws regarding health and safety.

For a while, apartment complex managers and owners had some leverage, even against the claims made under MCLA § 554.139, because of the decision in *Teufel v Watkins,* 267 Mich App 425 (2005). In *Teufel,* a case involving a slip and fall at a leased residence, the appellate court concluded in a footnote, that the statutory duties of MCLA § 554.139 did not encompass an accumulation of ice and snow. Because of this footnote, apartment complex managers and owners had a decent chance of either settling a case below its true value or obtaining dismissal by way of a motion.

Within a year of the Teufel decision, a different panel of the Michigan Court of Appeals published a decision that, effectively, trumped *Teufel*. In *Benton v Dart Properties, Inc.,* 270 Mich App 437 (2006), the appellate court specifically addressed the application of MCLA 554.139 to accumulations

of ice and snow. The Benton panel concluded that if an apartment complex sidewalk had ice on it, then it was not fit for its intended use, and therefore, MCLA § 554.139 was violated, no matter how open and obvious the ice was.

Over the past few months, the appellate court has been "handling" the *Allison v A.E.W. Capital Management, LLP* case. This case involves a tenant, who was a building engineer by profession. He admitted that he routinely monitored the weather, and recalled that the newscasts on the night before he slipped and fell warned him that it was snowing at the time of the newscast. Further, he admitted that the newscast that he watched the morning of his fall warned him that there was snowfall during the overnight hours. He even testified that it may have been snowing at the time of his slip and fall that morning.

He fell while he was leaving his apartment to go to work. He testified that as he opened his door to leave the apartment, he could see that the entire area, including the sidewalks and parking lot, were covered with snow. In fact, he admitted that the entire ground had at least two inches of snow, and that he walked approximately 30 feet through the snow before falling. The trial court dismissed his case on a motion; the plaintiff appealed the decision.

On Nov. 28, 2006, the appellate court issued a published opinion affirming the dismissal of the plaintiff's claim. The appellate court held that, although it disagreed with the footnote in *Teufel*, it was bound to follow it. The holding of *Allison* was that *Benton* applied only to sidewalks and that *Teufel* applied only to parking lots. Therefore, ice and snow on a sidewalk violated MCLA § 554.139, while ice and snow on a parking lot did not fall within the duties imposed by the statute, and were, therefore, subject to the open and obvious doctrine.

By January 2007, the appellate court vacated its opinion in *Allison*. It issued a new opinion on March 15. The new Allison opinion now holds that ice and snow on a parking lot in an apartment complex violates MCLA § 554.139. The reasoning behind the ruling is that walking in parking lots is an intended use of the parking lot, and snow or ice accumulated upon the parking lot renders it unfit for its intended use.

It is likely that the Allison decision will be appealed to the Michigan Supreme Court, but for now, ice and snow accumulations at apartment complexes are high on the radar of plaintiff lawyers trying to file lawsuits.

For a complete copy of the Michigan Court of Appeals published opinion on *Allison v A.E.W. Capital Management, LLP,* click here.

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